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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 762

GEORGIA POWER COMPANY,

Petitioner,

v.

FEDERAL POWER COMMISSION, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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Dated January 31, 1958.

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Georgia Power Company (Georgia) prays that a writ of certiorari issue to the United States Court of Appeals for the Fourth Circuit to review a judgment of that court remanding the cases before it to the Federal Power Commission (the Commission) for further proceedings as indicated in the court's opinion. Georgia contends that the Commission's order should have been wholly and finally set aside for reasons definitively rejected by the court in its opinion.

A petition for a writ of certiorari has already been filed by South Carolina Generating Company (Generating Company) and assigned No. 697 on this Court's appellate docket.

Opinions Below

The opinion of the Court of Appeals has not been reported but is set forth at Appendix A to Generating Company's petition in No. 697. The opinion and order of the Commission appear at 16 F.P.C. 52 and 15 P.U.R. 3d 289 and are set forth at pages 93 through 120 of Volume I of the transcript of the record as certified by the clerk of the court below.[1]

Jurisdiction

The judgment of the Court of Appeals is dated and was entered October 23, 1957. By order dated November 23, 1957, the Court of Appeals denied a petition for rehearing filed by Generating Company.

The jurisdiction of this Court is invoked under the Act of June 25, 1948, c. 646, 62 Stat. 928, 28 U.S.C. § 1245(1) and Section 313(b) of the Federal Power Act, 16 U.S.C. § 8251(6).

Question Presented

Under the decisions of this Court in *Mobile*[2] and *Sierra*,[3] may the Commission set aside rates fixed by a contract between two utilities which are under no obligation to serve each other, upon the sole ground that the rates do not conform with the Commission's determination of "reasonable rates" under the "cost-of-service formula" and

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1. The transcript of record as certified consists of six volumes. Record references herein are to the respective volumes by Roman numeral, followed by Arabic numbers designating pages of the volume referred to as originally paginated. Nine copies of the volumes referred to herein (I, II and V) were filed with the Clerk of this Court by Generating Company in No. 697. Volume I is the same as Part I of petitioners' appendix in the court below, Volume II is the same as Part II of such appendix and Volume V is the same as the Commission's appendix in the court below.

2. *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U. S. 332.

3. *Federal Power Commission* v. *Sierra Pacific Power Co.*, 350 U. S. 348.

where it affirmatively appears that the contract benefits the consumers of both parties?

Statute Involved

The statutes involved are §§ 205 and 206 (16 U.S.C. §§ 824d and 824e; Appendix *infra*) of the Federal Power Act, Title II, 49 Stat. 847 (1935), 16 U.S.C. § 824 *et seq.*

STATEMENT OF THE CASE

The Rate Contract

Georgia is a public utility engaged in the business of generating and distributing electric energy in all but five of the State's 159 counties. In 1951, it became necessary for Georgia to increase its capacity or find a new source of power in its Augusta area in order to meet the expanding service requirements of that part of the State. Accordingly, it made plans for the construction of a new steam generating plant, acquired land, and ordered a generator for that purpose in the neighborhood of Augusta (R. II, 143).

South Carolina Electric & Gas Company (E & G) is a public utility carrying on an electric generating and distributing business in a wide area of South Carolina. Its service area borders in part on Georgia's. Before Georgia had started constructing the proposed Augusta plant, its management learned of E & G's plans to build a substantial new generating plant within two miles of the site acquired by Georgia, for the purpose of obtaining new capacity for E & G's own distribution needs and also serving a new plant being constructed by the Atomic Energy Commission. Fully conscious of its obligation to serve its customers at the lowest possible cost, Georgia's management entered into negotiations with officials representing E & G and its newly formed subsidiary, Generating Company, which was organ-

ized by E & G for the purpose of constructing the proposed plant (R. II, 160-163).

During the course of the negotiations, it was determined that Generating Company could produce the power needed by Georgia at an average of $11.30 per kw a year less than the same power would have cost if produced by Georgia itself in its proposed new plant (R.I., 146). This saving in costs resulted primarily from the circumstance that Generating Company was so organized as to enable it to obtain its financing on a 90% debt to equity ratio. However, neither E & G nor Generating Company was under any legal obligation to furnish power to Georgia, neither was affiliated with Georgia in any way, and the proposed plant's capacity as then projected by Generating Company could have been used entirely in the E & G system (R.V., 49) or cut back before actual construction (R.V., 54). Accordingly, after extended bargaining, and in order to induce Generating Company to supply its needs, Georgia agreed to a charge per kw designed to fall about equally between the estimated cost to Georgia of producing energy at its proposed plant and the estimated cost at the proposed Generating Company plant (R. II, 164). A rate contract embodying this capacity charge and covering 75,000 kw (*i.e.*, one-half of the capacity of the proposed plant), was then worked out and signed on November 9, 1951. Georgia cancelled its proposed Augusta plant, while Generating Company proceeded with its proposed plant, which began operation in 1954. As signed, the contract contained a recapture or cancellation clause which is customary in arrangements of this kind (R. II, 145).

As the Court of Appeals recognized in its opinion, the net result of the contract to Georgia was to effect a saving in power cost to Georgia in the sum of about $600,000 per year (R. I, 88; II, 165), "so that its retail consumers in Georgia were also benefited" (Gen. Co.'s pet. for cert.,

p. App. 7). As testified by Georgia's President at the hearing before the Commission (R. II, 147):

> "• • • I think the contract was good at the time it was made and I think it is still a good contract."

As the Court of Appeals also recognized in its opinion, the net result of the contract to Generating Company and its parent E & G was to assist in the financing of Generating Company's new plant as a two-unit, 150,000 kw facility rather than a one-unit, 75,000 kw facility (R. II, 147-148). The use of two units rather than one, in addition to serving E & G's corporate policy of building capacity as warranted by demands, also resulted in lower unit costs which were considered in setting the contract rate to Georgia (R. II, 148). However, as shown at pages 4 and 5 of Generating Company's petition for certiorari, the construction of the new plant by Generating Company, and its unusual financial structure, placed a considerable financial burden on E & G because of the unitary economic nature of the E & G-Generating Company system. One of the purposes of the allocation of the savings resulting from the plan envisioned by the contract was to help defray these added costs which otherwise would have had to be borne by E & G's consumers.

Despite the advantages to Georgia and its retail consumers resulting from this contract, the Public Service Commission of the State of Georgia complained to the Federal Power Commission of discrimination arising from the fact that the rate charged Georgia was substantially higher than the rate charged by Generating Company to its parent, E & G—a fact which was, of course, inherent in the plan, as was well known to all parties at the time the contract was entered into. The Commission thereupon entered into formal hearings, at which all of the above facts were concededly established, and its Presiding Examiner thereafter issued an order approving the rate and terminating the Commission's investigation.

The Presiding Examiner's Decision

In his order the Presiding Examiner found that certain facts, which we think are controlling, had been established by uncontroverted evidence, and, although the Commission subsequently reversed his decision, it did not in its order disagree that said facts had been established by uncontradicted evidence. The Presiding Examiner found that:

> "* * * The Georgia Power Company contract is mutually advantageous to the Georgia Company and its rate payers and to the S. C. Company and its rate payers. There is no evidence in this record that any one or more of the modifications of the Georgia Power contract suggested or recommended on this record would be advantageous to the Georgia Company or its rate payers. The logic of the facts of record is that a reduction of the charges by Generating Company to Georgia Company might with more likelihood bring about a recapture of the 75,000 kw capacity (with this Commission's approval) to the detriment of Georgia Company and its rate payers than likely to bring any benefit to the Georgia Company and its rate payers. The preponderance of the evidence of record is to the foregoing effect. The evidence is *uncontroverted* that Georgia Company has obtained and enjoys today for the benefit of its rate payers the *cheapest* source of 75,000 kw of electric energy available to it, and that it could not in the past, nor can it now, produce the energy at such low cost to it. The evidence is *uncontroverted* that Georgia Company saves about $600,000 a year by reason of the contract for the 75,000 kw." (Italics supplied) (R.I., 87-88)

The Presiding Examiner also found that:

> "* * * There is no evidence that any Georgia rate payer is required to pay a single cent more by reason of the low charges to the United States Government agency, AEC. If any rate payers are affected adversely, it would be the South Carolina customers of S. C. Company, not the customers of Georgia Company. But were the recommendations accepted to reduce the

charges to Georgia Company because of the lower contract charges to AEC, the South Carolina customers would be required to make up the loss to the S. C. Company system of revenues below its cost to serve, including a reasonable return. Upon this record that would constitute a subsidy to the customers of the Georgia Company at the expense of the customers of South Carolina Electric & Gas Company." (R.I., 92.)

Decision of the Commission

As above pointed out, the Commission reversed the Presiding Examiner's order dismissing the proceedings and issued its opinion and order setting the contract aside.

The Commission approached the problem exactly as it had that presented to it in *Sierra* and *Mobile*:

"• • • The first issue is whether the rate to Georgia Power Company should be based upon cost of service on a net investment rate base or whether the rate should take into account the value of service to Georgia Power Company." (R.I., 98.)

Asserting that "it is clear that we are required to *fix* a rate in the public interest" (emphasis supplied), the Commission concluded "that the cost-of-service formula is the one best adapted in determining just and reasonable rates in this industry where all costs are known or clearly determinable" (R. I, 100). The Commission expressly rejected what it described as the "value-of-service formula" advocated by the Generating Company, on the ground that "approval of a rate based upon recognition of these elements foreign to any cost formula would be a radical departure from established rate making principles utilized by this Commission" (R. I, 99). Accordingly, as the contract rate produced a higher return than would be allowable under a rate fixed on the basis of the cost-of-service formula, the Commission set it aside. The Commission's only attempt to distinguish *Mobile* and *Sierra* was that,

"Our investigation and findings herein are precisely the type of regulation which those cases sanction." We assume the Commission was referring to the fact that this was a proceeding under § 206(a) of the Federal Power Act whereas in *Mobile* and *Sierra* the proceedings were initiated under § 205(d) and (e) (or the comparable provisions of the Natural Gas Act, 52 Stat. 821 (1938), 15 U.S.C. § 717 *et seq.*).

Generating Company, as well as the South Carolina Public Service Commission, filed petitions for review (under § 313(b) of the Federal Power Act) in the Court of Appeals for the Fourth Circuit, asserting, among other things, that the Commission's order was in direct conflict with the express holding of this Court in *Sierra* that the cost-of-service formula was an "erroneous standard" to be applied in setting aside a contract rate. Georgia moved in that court to intervene in support of the petitioners on the grounds hereinafter stated, and such motion was granted by the Court of Appeals in its judgment of October 23, 1957.

The Opinion of the Court of Appeals

The court below, although recognizing that the petitioners' argument based upon this Court's decisions in *Mobile* and *Sierra* "seems to have great logical force," sought to distinguish those cases on the ground that there this "Court was dealing with rates, too low to permit an adequate return according to accepted standards," whereas, "In the pending case, to the contrary, we are dealing with a rate that was too high according to accepted standards of rate regulations." The Court continued:

> "• • • The case before us comes down to the inquiry whether the utilities *were justified in retaining for themselves the savings* inherent in a situation which developed in 1950 and led to the organization of the Generating Company. At that time the pressing need for more power, felt by E & G, the Georgia Power

Company, and the Atomic Energy Commission, culminated in an arrangement *which was beneficial to all concerned.* Undoubtedly the successful solution was due in large measure to the experience and enterprise of the interested parties, *but it does not follow that they were entitled to all of the savings* which actually flowed from the natural growth and economic development of the area. The problem presented to the Commission was not substantially different from that which usually arises when a public utility, *by the force of circumstances a natural monopoly, seeks to furnish a commodity to the general public;* the reasonableness of its proposed rate must be considered, and the answer is found by allowing a reasonable return upon the investment." (Italics supplied) (Gen. Co.'s pet. for cert., pp. App. 11-12.)

Georgia's Interest

It is, of course, to Georgia's interest, as well as its duty as a public utility, to obtain the cheapest available power for the benefit of its customers. Accordingly (disregarding for the moment Georgia's natural desire to live up to its contract), if there were no doubt but that the Generating Company could be compelled to sell power to Georgia for the duration of the contract at the rates now fixed by the Commission, it might well be to Georgia's interest to accept the Commission's order. However, the contract here in issue expressly provides that Generating Company may reduce the amount of power which it is required to furnish Georgia in a very substantial amount on twelve months' notice, and may terminate the contract entirely on thirty months' notice. While the Commission stated in its decision that it might attempt to prevent Generating Company from exercising the cancellation provision, it is by no means clear that the Commission has the legal power to do so. Nor is it clear that, even assuming the Commission to have such power, the facts would be such as to compel or justify its exercise. Because the contract rate is substantially lower than would be the cost to Georgia of

providing the contract power itself from a like-size plant in the same area if the contract were terminated, Georgia believes it is to its interest to uphold the contract.

Moreover, Georgia believes that it is to its long-run interest, as well as in the public interest, that a contract of this nature be held valid and binding in accordance with its terms. Otherwise, it will be difficult, if not impossible, for Georgia—or any other utility similarly situated—to enter into economically desirable arrangements with neighboring generating companies which are not obligated to serve it, even though such companies would otherwise be able and willing to serve Georgia at costs lower than those at which Georgia could produce its own power. Thus, the effect of the judgment below may well be to interfere with Georgia's ability to obtain power to meet its future needs on economically desirable terms otherwise available.

For these reasons, Georgia believes it is to its interest to oppose the Commission's order and the decision below. It does so on the ground that both the Commission and the court below have wholly misconceived the Commission's power and functions under the Federal Power Act as analyzed by this Court in *Sierra* and *Mobile*.

Reasons for Granting the Writ

The effect of the decision below is to sustain the Commission's attempt to reestablish the very theories of rate regulation which were expressly rejected by this Court in *Mobile* and *Sierra*: That it is the Commission's function to "fix" all rates at a level where they will produce a "fair return" to the seller when measured by the "cost of service formula." Indeed, in this respect the Commission's opinion and order is couched in almost the identical language used in its briefs in support of the orders which were reversed in those cases.

The Commission's apparent attempt to distinguish those cases on the procedural ground that it is now proceeding under § 206(a) instead of § 205(d) and (e) is no distinction at all. This Court expressly rejected the Commission's contention in *Sierra* that if necessary it would set aside the contract there in issue under § 206(a) "solely because it yields less than a fair return on the net invested capital," holding that that contention "appears on its face to be based on an erroneous standard" (350 U.S. at 354-355). The issue here is not whether the Commission adopted the right procedure, but whether it applied the right standard.

So also, the attempt of the court below to distinguish *Sierra* and *Mobile* on the ground that there the court was dealing with a low rate whereas here the court was dealing with a high rate when measured on the basis of the cost of service formula, is a distinction without a difference.

In *Sierra*, speaking of the low rate there in issue, this Court said:

> "* * * while it may be that the Commission may not normally *impose* upon a public utility a rate which would produce less than a fair return, it does not follow that the public utility may not itself agree by contract to a rate affording less than a fair return or that, if it does so, it is entitled to be relieved of its improvident bargain. Cf. *Arkansas Natural Gas Co. v. Railroad Comm'n*, 261 U.S. 379. In such circumstances the sole concern of the Commission would seem to be whether the rate is so low as to adversely affect the public interest—as where it might impair the financial ability of the public utility to continue its service, cast upon other consumers an excessive burden, or be unduly discriminatory." (350 U.S. at 355.)

That that reasoning is equally applicable to the case at bar where the buying utility has agreed to pay a rate which

would produce *more* than "a fair return" is readily apparent. To paraphrase Sierra:

> "* * * while it may be that the Commission may not normally *impose* upon a [buying] public utility a rate which would produce [more] than a fair return [and that the seller cannot normally charge such a rate], it does not follow that the [buying] utility may not itself agree by contract to a rate affording [more] than a fair return * * * In such circumstances the sole concern of the Commission would seem to be whether the rate is so [high] as to adversely affect the public interest—as where it might impair the financial ability of the [buying] utility to continue its service, cast upon other consumers an excessive burden, or be unduly discriminatory."

We submit that a contract such as that here in issue, which concededly saves the buying utility $600,000 a year, clearly does not violate any such standards, and cannot be "adverse to the public interest" on any theory.

We would point out also that the court below was clearly in error in assuming that in the case at bar the buying and selling utilities were "retaining for themselves the savings inherent in [the] situation." It is plain on its face that the savings in cost of power to Georgia will be passed on to Georgia's consumers in the normal course of the performance of the Georgia Commission's regulatory functions. Similarly, as the South Carolina Commission has expressly pointed out, because E & G and South Carolina are an economic unit, it follows that if Generating Company is deprived of its profit under this contract, the resulting amount would have to be made up by increasing the rates payable by E & G's customers (R. I, 11; II, 201; petition by So. Car. P.S.C. for rehearing below, p. 3). Thus there is no basis whatever for the assertion of the Court of Appeals that the two companies were "retaining for themselves the savings inherent in" this situation. On the con-

trary, the purpose and effect of the contract is to divide those savings between the *consumers* of both Generating Company's parent and Georgia.

We suggest that the error of the court below flows from its failure to appreciate the difference between the duties and powers of the Commission in regulating wholesale sales and those of a state commission regulating retail sales to the ultimate consumers. In the latter situation, as the court below correctly observed, the seller, "by the force of circumstances a natural monopoly, seeks to furnish a commodity to the general public; the reasonableness of its proposed rate must be considered, and the answer is found by allowing a reasonable return upon the investment" or other proper rate base. In such circumstances, there is no reason for special rate contracts: no purchaser would willingly agree to pay more, and no seller to accept less, than an amount sufficient to allow a reasonable return on a proper rate base, for that is what each is entitled to demand as a matter of law.

A somewhat similar situation may also arise where a natural gas pipe line company, having built a line into a given territory, is generally in the position of a "natural monopoly." Where no special circumstances require a special rate, such as in *Mobile*, it is customary for such companies to enter into "service agreements" for the sale of the commodity at whatever rate may be lawfully on file from time to time under the supervision of the appropriate regulatory authority. See, for example, the record in *Federal Power Commission* v. *Memphis Light, Gas and Water Division*, No. 694, U.S., October Term, 1957, in which petitions for certiorari are now pending before this Court.

But that is not this case. Insofar as Generating Company's relations with Georgia are concerned, no element of "monopoly" was involved at all. It was not seeking to

furnish power to Georgia. Indeed, it was under no obligation to sell to Georgia, and Georgia was under no constraint to buy from it except on terms beneficial to Georgia. The question was simply whether it was more economical and beneficial to both companies and the consumers of each for the companies to enter into this contract, or for Georgia to produce its own power.

It must be obvious that where a utility is *not* "by the force of circumstances a natural monopoly" many situations will arise where without a binding contract for a special rate, there will be no sale. For example without special rates Sierra and Tyler[4] would have purchased from other potential suppliers, and the Ideal Cement Company involved in *Mobile* would have moved its plant elsewhere. So here but for the special rate embodied in this contract Georgia would presumably have had to produce its own power. We submit that the essence of this Court's decisions in *Mobile* and *Sierra* is precisely that, because economic conditions often make individualized arrangements necessary and beneficial in the wholesale field, Congress intended that companies should be as free to enter into them under the Federal Power and Natural Gas Acts as they would be if no acts existed. The only effect of the Acts in such situations is to require notice, and empower the Commission to set such contracts aside if the public interest so requires—and that means something more than a mere determination that the rate is either higher or lower than the rate the Commission would impose.

Not only is there no showing in the present case that the public interest requires the present contract to be set aside, but on the contrary it is plain on the conceded facts that

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4 The purchaser in *Tyler Gas Service Co. v. Federal Power Commission*, 247 F. 2d 760 (D. C. Cir. 1957), *cert. denied*, 26 U. S. L. Week 3174 (U. S. Dec. 9, 1957) No. 520.

it is beneficial to the public interest: It results in lower rates to the consumers of both buyer and seller than would have been possible if there had been no contract.

To be sure, the decision below seeks to preserve the resulting savings by allocating them exclusively to the consumers of the buyer. But such allocation is not only in direct violation of the contractual arrangement between the parties, it also is made without any properly based finding that the agreed upon allocation is not in the public interest. Moreover, as indicated above, if the decision below is allowed to stand, it would undoubtedly accelerate the exercise by the seller of its recapture powers, to the great detriment of Georgia. Further, it would probably make it impossible for any utility to enter into such an arrangement in the future however advantageous to the ultimate consumers it might be. Certainly in the present instance it seems clear from the fact that the contract was only entered into after extensive arm's length bargaining, that except for the advantageous rate, Generating Company would not have agreed to sell power to Georgia at all—thus increasing the cost of power to Georgia's consumers by $600,000 per year.

We submit that the decision below directly contravenes the construction of the Natural Gas and Federal Power Acts set forth in this Court' opinions in *Mobile* and *Sierra*, and reintroduces into their administration the very confusion and uncertainty which existed before those cases were decided. As the Acts vitally affect two of the largest industries in the country, it is respectfully submitted that the Court grant the writ applied for.

Conclusion

The petition for certiorari should be granted.

Respectfully submitted,

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January 31, 1958.

APPENDIX

Sections 205 and 206 of Federal Power Act.

Sec. 205. (a) All rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations affecting or pertaining to such rates or charges shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

(b) No public utility shall, with respect to any transmission or sale subject to the jurisdiction of the Commission, (1) make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

(c) Under such rules and regulations as the Commission may prescribe, every public utility shall file with the Commission, within such time and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

(d) Unless the Commission otherwise orders, no change shall be made by any public utility in any such rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, except after thirty days' notice to the Commission and to the public. Such notice shall be given by filing with the Commission and keeping open for public inspection new schedules stating plainly the change or changes to be made in the schedule or schedules then in force and the time when the change or changes will go into effect. The Commission, for good cause shown, may allow changes to take effect without requiring the thirty days' notice herein provided for by an order specifying the changes so to be made and the time when they shall take

effect and the manner in which they shall be filed and published.

(e) Whenever any such new schedule is filed the Commission shall have authority, either upon complaint or upon its own initiative without complaint, at once, and, if it so orders, without answer or formal pleading by the public utility, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and, pending such hearing and the decision thereon, the Commission, upon filing with such schedules and delivering to the public utility affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect; and after full hearings, either completed before or after the rate, charge, classification, or service goes into effect, the Commission may make such orders with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made at the expiration of such five months, the proposed change of rate, charge, classification, or service shall go into effect at the end of such period, but in case of a proposed increased rate or charge, the Commission may by order require the interested public utility or public utilities to keep accurate account in detail of all amounts received by reason of such increase, specifying by whom and in whose behalf such amounts are paid, and upon completion of the hearing and decision may by further order require such public utility or public utilities to refund, with interest, to the persons in whose behalf such amounts were paid, such portion of such increased rates or charges as by its decision shall be found not justified. At any hearing involving a rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the public utility, and the Commission shall give to the hearing and decision of such questions preference over other questions pending before it and decide the same as speedily as possible. [49 Stat. 851; 16 U.S.C. 824d.]

Sec. 206. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that

any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order.

(b) The Commission upon its own motion, or upon the request of any State commission whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transmission of electric energy by means of facilities under the jurisdiction of the Commission in cases where the Commission has no authority to establish a rate governing the sale of such energy. [49 Stat. 852; 16 U.S.C. 824e.]